



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 3612

In re Patent Application of

Stefan Huedepohl

Application No. 10/658,038

Confirmation No.: 2020

Filed: September 9, 2003

Examiner: Kiran B. Patel

CERTIFICATION UNDER 37 CFR 1.10

I, Mark A. Ussai, hereby certify that this correspondence is being deposited with the United States Postal Service in an envelope as "Express Mail Post Office to Addressee," mailing Label Number ED 015134573 US, addressed to, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Mark A. Ussai
Signature

December 20, 2004
Date

"FOLDABLE TOPS FOR CONVERTIBLE
VEHICLES"

PETITION UNDER RULE 181(A)(3) TO INVOKE SUPERVISORY AUTHORITY
AND/OR
PETITION UNDER RULE 144 TO WITHDRAW RESTRICTION REQUIREMENT
AND/OR
PETITION UNDER MPEP 1306.01 TO DEFER ISSUANCE OF THE PRESENT
APPLICATION UNTIL ALL MATTERS DISCUSSED HEREIN ARE RESOLVED

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

To Director of Technology Center 3600

Sir:

Because no response to Applicant's REQUEST FOR INITIALED COPY OF FORM PTO-1449 UNDER MPEP 609III(C)(2), ETC., AFTER NOTICE OF ALLOWANCE MAILED 18 OCT 2004 has been received within 2 months of the mailing date (October 18, 2004) of the Notice of Allowance, as a precautionary measure in view of Rule 181(f), Applicant hereby requests that the Supervisory Authority of the Commissioner be invoked in order to correct several irregularities in the present application before issuance.

1. Petition Under Rule 181(a)(3)

Attached hereto is a copy of the above-noted Request filed November 19, 2004, which is incorporated herein by reference. In accordance with the Request filed November 19, 2004, the Supervisory Authority of the Commissioner is hereby requested to provide:

1. An Initialed Copy of the Form PTO-1449 filed August 31, 2004,
2. An Interview Summary concerning Substantive Discussions between the Undersigned and the Examiner during October of this year, and
3. Clarification of the Basis for Canceling Claims 21-25.

As the grounds for each of these requests are provided in detail in the attached Request, it is not believed necessary to repeat the same herein. Simply stated, the Applicant requests action on all three requests provided in the Request filed November 19, 2004 before the present application is passed to issuance.

2. Petition Under Rule 144

As discussed in the Request filed November 19, 2004, a restriction requirement mailed August 2, 2004 required Applicant to select one of the inventions represented by claims 1-20 and claims 21-25. On August 31, 2004, Applicant filed a Response to the Restriction Requirement, in which claims 1-20 were provisionally elected with traverse of the restriction requirement. Thus, Rule 143 was satisfied. A copy of the Response filed August 31, 2004 is enclosed herewith and also incorporated herein by reference.

Contrary to the inference provided in the Examiner's Amendment and Examiner's Statement of Reasons for Allowance, Applicant never authorized the Examiner to cancel claims 21-25. Thus, no response has been provided to Applicant's Arguments in the Response filed August 31, 2004. In effect, claims 21-25 were unilaterally canceled by the Patent Office without responding to the arguments provided in the Response filed August 31, 2004.

Reconsideration of this unilateral cancellation of claims 21-25 is therefore requested.

According to Rule 144, the restriction requirement must be made final before the Applicant may petition the Commissioner for review of the restriction requirement. Because claims 21-25 were unilaterally canceled without authorization, the restriction requirement has not been made final, even though the Notice of Allowance has issued.

As further discussed in the Request filed November 19, 2004, Applicant did not acquiesce to the restriction requirement and identified the prejudice that could result to the Applicant if this matter is not adequately clarified before issuance.

Therefore, if it is determined that the restriction requirement was effectively made final by the Notice of Allowance, Applicant hereby requests consideration on the merits and withdrawal of the restriction requirement pursuant to Rule 144 based upon the arguments provided in the Response filed August 31, 2004, so that claims 21-25 will be examined in this application.

Applicant stands by the grounds for withdrawing the restriction requirement set forth in the Response filed August 31, 2004, which have been incorporated herein by reference, and wishes to supplement those arguments as follows:

In the Restriction Requirement mailed August 2, 2004, the primary basis for requiring restriction was the alleged separate classification of the inventions of claims 1-20 (Class 296, Subclass 107.07) and 21-25 (Class 296, Subclass 107.12).

However, according to the Examiner's search notes dated October 18, 2004 (available from the PAIR website), both Class 296, Subclass 107.07 and Class 296, Subclass 107.12 were searched for this application on October 8, 2004. Thus, the apparent primary basis for requiring restriction made in the Restriction Requirement of August 2, 2004 has been mooted, as the Examiner searched both classifications. As a result, there is no "serious burden" (MPEP 803) to prevent examination of claims 21-25 in this application.

If it is determined that the restriction requirement has not been made final, such that a Petition Under Rule 144 is not yet ripe, Applicant requests invocation of the Supervisory Authority to require appropriate consideration by the Examiner in accordance with MPEP 800 before this application is passed to issuance.

3. Petition to Defer Issuance Until All Matters Discussed Herein are Satisfactorily Resolved

Because the issue fee filing deadline can not be extended beyond January 18, 2005, Applicant intends to pay the issue fee shortly before the deadline unless advised to the contrary so as to avoid abandonment of this application. Therefore, as it is not certain whether this Petition will be acted upon before January 18, 2005, Applicant preemptively requests deferral of the issuance of the patent application until all matters are satisfactorily resolved.

It is believed that the failure to comply with the regulations and guidelines, which could significantly prejudice the Application, present extraordinary circumstances in accordance with MPEP 1306.01. Moreover, because these extraordinary circumstances were created by the Office's failure to comply with the regulations and guidelines, it is respectfully submitted that no petition fee under Rule 314 should be charged, if it becomes necessary to defer issuance of this application.

Applicant believes that no petition fee is required for substantive consideration of this Petition, in view of the irregularities created by the Office. However, if Applicant is mistaken as to the fee requirements for filing the present Petition, please charge or credit Deposit Account No. 13-3080 with any shortage or overpayment of the fees associated with this communication, as authorized on the attached transmittal sheet. Applicant reserves the right to petition for a refund of any petition fees charged to consider this petition.

Respectfully submitted,

STEFAN HUEDEPOHL



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